RECENT CASE NOTES

CONSTITUTIONAL LAW—CIVIL SERVICE APPOINTMENTS—VALIDITY OF STATUTE PREFERRING VETERANS.—The municipal Civil Service Commission of New York City certified three names to the Police Commissioner for promotion, giving preference to veterans of the Great War, in accordance with a New York Statute (Laws, 1920, ch. 282) which provided that such veterans should, in civil service appointments and promotions, be preferred above others of the same grade on the lists of those who had passed the civil service examinations. The petitioners contended that the statute was unconstitutional and that the three highest names on the examination list should be certified for promotion. *Held,* that the statute was unconstitutional. *Matter of Barthelmess v. Cukor* (1921) 231 N. Y. 435, 132 N. E. 140.

Under a state constitution providing that the legislature shall not grant to any class of citizens privileges or immunities which, upon the same terms, shall not apply to all citizens, a veteran preferment statute has been held constitutional on the ground that the phrase "privileges and immunities" means only such as belong to every citizen, and does not include the privilege of holding office. *Shaw v. City Council of Marshalltown* (1905) 131 Iowa, 128, 104 N. W. 1121, construing Iowa Acts, 1904, ch. 9, sec. 1. Where a state constitution provided that the legislature might make "wholesome and reasonable" laws to govern public employments, a statute preferring veterans was considered valid. *Opinion of the Justices* (1896) 166 Mass. 589, 44 N. E. 625, construing Mass. Sts. 1896, ch. 517, sec. 6. At least one court has circumvented a similar statute by holding that it is not to be invoked by any veteran unless he can show that he is the *only* veteran qualified for preferment under its terms. *Allison v. Board of Education* (1899) 125 Calif. 72, 57 Pac. 673, construing Calif. Sts. 1891, ch. 212. In the instant case, the unusual wording of the New York Constitution to the effect that promotions should be made as far as practicable on the basis of competitive examination is held to preclude any unreasonable statutory preferment of one class over all other classes of candidates irrespective of any consideration of their relative fitness for office or their comparative standing on the lists of those successfully passing the examinations.

CONSTITUTIONAL LAW—EMERGENCY CLAUSES IN LEGISLATION—LEGISLATIVE DECLARATION NOT CONCLUSIVE ON COURTS.—Mandamus proceedings were instituted to compel the Secretary of State of Missouri to file referendum petitions against four bills passed by the Legislature abolishing certain county offices. The Secretary of State refused to file these petitions because each bill contained the words "This enactment is hereby declared necessary for the immediate preservation of the public peace, health, or safety." Article 4, section 57 of the Constitution of Missouri provides that a referendum "May be ordered except as to laws necessary for the immediate preservation of the public peace, health, or safety." *Held,* (two judges *dissenting*) that a statutory statement of purpose does not foreclose a judicial determination of the real character of a law. *State v. Becker* (1921, Mo.) 233 S. W. 641.

As a general rule, the existence of a public necessity is a matter for the exclusive determination of the legislature and not within the province of the courts. 1 Willoughby, *Constitution* (1910) 19; *Scott v. Frazer* (1919, S. E. D. N. D.) 258 Fed. 669; *Miller v. Fitchburg* (1901) 180 Mass. 32, 61 N. E. 277. Citing a South Dakota decision as authority, several cases have held that the judgment of a legislature in determining whether a measure is necessary for the preservation of the public peace, health, or safety, is not subject to judicial review. *State v. Bacon* (1901) 14 S. D. 394, 85 N. W. 605; *Kadderly v. Portland* (1903) 44 Or. 118,

74 Pac. 710; *Van Kleeck v. Ramer* (1916) 62 Colo. 4, 156 Pac. 1108. But *State v. Bacon, supra,* seems to have been overruled. *State v. Whisman* (1915) 36 S. D. 260, 154 N. W. 707. And a later South Dakota decision holds that while the existence of an emergency making the preservation of the public peace, health, or safety necessary is a question for the legislature, yet whether an act, in substance and effect, meets the emergency is a question for the courts. *Hodges v. Snyder* (1920, S. D.) 178 N. W. 575. The latter may scrutinize a legislative declaration of an emergency and, if the statute purporting to be enacted to meet the emergency has no relation to its object, it is the duty of the court to so adjudge. *Mugler v. Kansas* (1887) 123 U. S. 623, 8 Sup. Ct. 273; *State v. Meath* (1915) 84 Wash. 302, 147 Pac. 11. A declaration that an act is of a certain class, excepted by the Constitution, has no more binding force than a declaration that an act is constitutional. *McClure v. Nye* (1913) 22 Calif. App. 248, 133 Pac. 1145. The instant case appears to follow the present trend of authority in holding that whether a measure is for the immediate preservation of the public peace, health, or safety, is controlled by the facts and not by a superfluous declaration of necessity. If the stated object is not in reality involved, its avowal should not deprive the people of their constitutional privilege of referendum. The power to determine whether the act falls within the legislative declaration of purpose rests with the courts. *State v. Sullivan* (1920, Mo.) 224 S. W. 327; *State v. Stewart* (1920, Mont.) 187 Pac. 641; (1915) 29 HARV. L. REV. 91.

JURISDICTION—SERVICE OF PROCESS ON OFFICERS OF FOREIGN CORPORATION NOT DOING BUSINESS IN STATE.—Suit having been filed against certain foreign corporations, service of process was attempted upon their officers who had come into the state to attend a convention on matters of business policy. *Held,* that the writ should be quashed for lack of jurisdiction, since the defendants were not "doing business" within the state. *Apgar v. Altonna Glass Co.* (1921, N. J. Eq.) 113 Atl. 593.

The requirements of due process of law forbid the assumption of jurisdiction *in personam* over anyone, in the absence of consent, who is not found in the state. *Pennoyer v. Neff* (1877) 95 U. S. 714. Hence, to render a foreign corporation amenable to process, it must appear that it is "doing business within the state in such manner and to such extent as to warrant the inference that it is present there. And even if it is doing business within the state, the process will be valid only if served upon some authorized agent." *Philadelphia & R. Ry. v. McKibbin* (1916) 243 U. S. 264, 37 Sup. Ct. 280. The question as to what constitutes the doing of business for the purpose of jurisdiction is one for which no general rule can be given. Each case depends upon its own facts. It has been held, for instance, that a railroad company was not amenable to process in a state where it maintained an active soliciting office, which not only sought business, but received money from prospective passengers to whom it gave prepaid orders for tickets to be obtained at another point, and issued exchange bills of lading for the convenience of shippers. *Green v. Chicago, Burlington, & Quincy Ry.* (1906) 205 U. S. 530, 27 Sup. Ct. 595. On the other hand, where a foreign manufacturing corporation maintained a soliciting office which had authority to take orders for machines and receive payment in money, checks, or drafts, payable and collectible within the state, it was held that the corporation was sufficiently present to validate a personal judgment. *International Harvester Co. v. Kentucky* (1913) 234 U. S. 579, 34 Sup. Ct. 944. It is to be noted that the jurisdictional question is distinct from the question as to the extent of business which must be done in order to bring foreign corporations within regulative statutes. Business may be sufficient to subject the foreign corporation to service of process, and yet insufficient to require it to take out a license. *International Text-Book Co. v. Tone* (1917) 220 N. Y. 313, 115 N. E. 914; *Tauza v. Susquehanna Coal Co.* (1917) 220 N. Y. 259, 115 N. E. 915.